

ORIGINAL

DOCKET FILE COPY ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20054

RECEIVED

AUG 9 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 ) RM-9636  
Amendment of Section 73.202(b) ) MM Docket No. 99-220  
Table of Allotments )  
FM Broadcast Stations )  
**Stevensville, MT or Darby, MT** )

To: Kathleen Scheuerle  
Allocations Branch

COMMENTS OF PETITIONER

The Battani Corporation submits these Comments in support of its proposal to amend Section 73.202(b) of the FCC's rules to allot FM channel 300C2 to **Stevensville, MT** as that community's "first" local aural service. <sup>1/</sup>

Even assuming that Petitioner's proposal is considered as a "second" local aural service at **Stevensville**, the FCC's FM allocation rules require that it be preferred over a Class A allotment at Darby. **Stevensville** has more than three times the population of Darby and is growing twice as fast as Darby. <sup>2/</sup>

---

<sup>1/</sup> The NPRM states that allotment of channel 300C2 at Stevensville would constitute a "second" local aural service. See NPRM at 4. Petitioner fully respects the FCC's characterization -- apparently based on precedent -- but, nevertheless, respectfully submits that the Commission should not consider the very recent allocation of channel 283A to Stevensville as a "first service" until a CP is issued for that channel. (The Commission does not consider, as a policy matter, that any ownership interest arises in a broadcast facility until a CP is granted; accordingly, it generally should not consider that a community has a "first local service" until at least such time as a CP has been issued for that community.) Such a policy is especially appropriate in this case, where a wide-area service from a Class C-2 channel's allotment at Stevensville is likely to be successfully auctioned and then constructed sooner (i.e., "first") than a limited Class A channel allotment to Stevensville.

<sup>2/</sup> Phone interview by counsel with local Judge in Stevensville who also works in Darby.

No. of Copies rec'd 014  
List ABCDE

Nancy Lowell, the City Clerk of Stevensville, notes that her city is likely to continue to grow twice as fast as Darby because it is better located in the center of their common valley than Darby and has the popular Bitterroot River to attract "the influx of new residents from California" and the tourists.<sup>3/</sup> While Darby has a population of about 650, the population of **Stevensville** has grown to about 1900 residents.<sup>4/</sup> While Darby and **Stevensville** both have a mayor, a city council and their own libraries and post offices, **Stevensville** has a Merchants Association (Darby does not), **Stevensville** has two medical clinics (Darby relies on nearby Hamilton, MT), **Stevensville** has a small airport (Darby does not) and **Stevensville** has its own newspaper, The Bitterroot Star (Darby does not). **Stevensville** also has its own school system, more than 50 retail businesses, a nursing home, an ambulance service, its own local police, fire and water departments and nearly a dozen churches. In sum, **Stevensville's** need for two FM channels is greater than Darby's need for one. See e.g., Clarendon, PA, Report and Order, Docket 99-53 (released July 23, 1999).

Moreover, Petitioner's proposed wide-area service on channel 300C2 will provide 70 dBu, City-Grade service to both Darby and **Stevensville**, whereby the Class A proposal at Darby will provide NO service for **Stevensville**. And, of course, Petitioner's Class C-2 proposal for **Stevensville** will serve more than twice the

---

<sup>3/</sup> Phone interview by counsel with City Clerk.

<sup>4/</sup> Id.

total area and total population than the proposal for Darby. Accordingly, Petitioner's proposal for **Stevensville** should be preferred. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7096 (1990).

Upon the FCC's allotment of the channel as requested and following the opening of an appropriate filing window, Petitioner will submit an application for the channel and, if a CP is subsequently granted, Petitioner will promptly build the new facility.

WHEREFORE, Petitioner urges that the FCC amend the FM Table of Allotments as follows:

<u>Community</u>	<u>Present Allotments</u>	<u>Proposed Allotments</u>
<b>Stevensville, MT</b>	283A <sup>5/</sup>	300C2

Respectfully submitted,



Robert Lewis Thompson  
**TAYLOR THIEMANN & AITKEN, L.C.**  
908 King Street, Suite 300  
Alexandria, VA 22314  
(703) 836-9400

Counsel for Battani Corporation

August 9, 1999

---

<sup>5/</sup> See note 1, supra.